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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,140	01/22/2004	Darrell Thomas Backström	7623	6400
7590	11/17/2004		EXAMINER	
WILLIAM S. LIGHTBODY, ESQ.			BLAU, STEPHEN LUTHER	
LIGHTBODY LAW OFFICE			ART UNIT	PAPER NUMBER
atrium suite 100			3711	
32600 FAIRMOUNT BLVD.				
PEPPER PIKE, OH 44124			DATE MAILED: 11/17/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/763,140	BACKSTROM, DARRELL THOMAS	
Examiner	Art Unit		
Stephen L. Blau	3711		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 22 January 2004.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-12 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) Claim(s) _____ is/are allowed.
6) Claim(s) 1-12 is/are rejected.
7) Claim(s) _____ is/are objected to.
8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
2. Claims 8-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 8 is indefinite in that the statement "said distance between adjacent pairs of wires is from 80% to 95% of the golf ball" is indefinite. It is uncertain what dimension of the golf ball is being compared to. Claims 9-11 are rejected for depending on a rejected base claim.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, and 4-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Jenkins.

Jenkins discloses ball retriever (Fig. 6) for a golf ball (Title) having a handle (60), at least three consecutive spaced wires extending from a handle (Fig. 6), space adjacent pairs of three consecutively spaced wires having an unexpanded distance less than the diameter of a golf ball so as to form a cradle on one side (Fig. 6, Col. 3, Lns. 4-7), adjacent pairs of wires being flexible so as to allow the expansion of the distance between to be at least equal to the diameter of a ball so as to allow a ball to pass (Col. 3, Lns. 7-19), and a handle and wires being separable from each other in the form of threads (52, Fig. 6).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jenkins.

Jenkins adjoining legs being separated by a distance less than the diameter of a golf ball (Col. 3, Lns. 5-19, Fig. 6). Jenkins does not disclose the distances between each leg but clearly an artisan skilled in the art in making a ball retriever with springy wire to allow entrance of a ball would have selected a suitable distance at the capture zone in which the distance between adjacent pairs of wires being from 80-95% the golf ball diameter in an unexpanded position is included.

Jenkins lacks the distance between adjacent pairs of wires being from 80-95% the golf ball diameter in an unexpanded position.

It would have been obvious to modify the retriever of Jenkins to have at the capture zone the distance between adjacent pairs of wires being from 80-95% the golf ball diameter in an unexpanded position in order to make it easy to capture a ball by not having to have the wires flex excessively to make an opening large enough for a ball to fit through.

7. Claims 2-3, and 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jenkins in view of Seeger.

Jenkins discloses a ball retrieve being a bulb or bowl shape (Col. 2, Lns. 65-72), one side of the retriever showing four wires (Fig. 6), a ball retriever able to capture three balls (Fig. 6), adjoining legs being separated by a distance less than the diameter of a golf ball (Col. 3, Lns. 5-19, Fig. 6), wires join outside of a cradle in the form of each wire joining another to form a loop (72, 76, 78, Fig. 6, Col. 2, Lns. 65-72) and wires join inside a cradle in the form of joining at a collar (74, Fig. 6, Col. 2, Lns. 70-72). Jenkins does not disclose the distances between each leg but clearly an artisan skilled in the art in making a ball retriever with springy wire to allow entrance of a ball would have selected a suitable distance at the capture zone in which all the six wires are equally spaced about the axis of a handle is included.

Jenkins lacks six wires extending 360 degrees with respect to the handle, and all the six wires are equally spaced about the axis of a handle.

It would have been obvious to modify the retriever of Jenkins to have at the capture zone all six wires being equally spaced about the axis of a hand in order to equally use any two wires to capture a golf ball at the capture zone.

Seeger discloses a ball retriever have only four wires in order to have a retriever which is able to retriever only one ball (Figs. 1-2). In view of the patent of Seeger it would have been obvious to modify the ball retriever of Jenkins to have six wires extending 360 degrees with respect to the handle in order to have a ball retriever which is smaller and retrieves less than three balls.

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jenkins in view of Carpenter.

Jenkins lacks a handle being a shaft of a golf club. Carpenter discloses a ball retriever handle being a shaft of a golf club (Fig. 1). In view of the patent of Carpenter it would have been obvious to modify the ball retriever of Jenkins to have a handle being a shaft of a golf club in order to minimize the number of handles needed in playing a round of golf.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lee discloses six wires joined outside a cradle.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve Blau whose telephone number is (571) 272-4406. The examiner is available Monday through Friday from 8 a.m. to 4:30 p.m.. If the examiner is unavailable you can contact his supervisor Greg Vidovich whose telephone number is (571) 272-4415.

slb/ 13 November 2004



STEPHEN BLAU
PRIMARY EXAMINER